GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute:—Industrial Dispute between the Workmen and the Management of Azad Industries (Bangalore Branch), Gundopant Street, Bangalore-2.

Award of the Labour Court, Bangalore—Published.

Read the following papers :

(1) Letter No. 53 /71-72, dated 13th April 1971 from Sri A. N. Sundara Murthy, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated the 13th day of April 1971.

PRESENT

Shri A. N. Sundara Murthy B.A. B.L., *Presiding Officer.*

Reference No. 79 of 68

M. K. Parameswaran Iyer, No. 20, 5th Temple Street, 15th Cross Road, Malleswaram, Bangalore. ... I Party

Vs

The Management of Azad Industries (Bangalore Branch) Gundopanth Street, Bangalore-2. ... II Party

REFERENCE :

Government Order No. FCL 661 LLD 68, dated 19th Nov. 1968

AWARD

1. The Government of Mysore in their Order No. FCL 661 LLD 68, dated 19th November 1968 have referred an industrial dispute existing between the above named parties to this Court for adjudication on the points of dispute noted below:—

> "Whether the management of M/s. Azad Industries (Bangalore Branch), Gundopanth Street, Bangalore-2, justified in terminating the services of Sri. M. K. Parameswaran Iyer ?

If not, is workman Sri M.K. Parameswaran Iyer, entitled for reinstatement with back wages and continuity of service or any other relief ?"

2. The first party workman has filed his claim statement as follows:— The second party is a partnership concern having two partners and it has its head office in Mangalore, South Kanara.

The second party has a branch at Bangalore. The first party workman was appointed as a full time accountant bythesecond party on 19th April 1967 on a monthly salary of Rs. 250 with an annual increment of Rs. 50 and daily bata of Rs. 1-50 per day.

Before the first party workman was appointed the second party had engaged one Munir Ahamed who was a typist in the Director of Public Health Department, Government of Mysore, who was attending to the accounts after office hours. Besides this person one B. Com , student was also attending to accounts and office work. The first party workman worked with the branch office from 1st April 1967 to 10th November 1967 and was writing accounts. The second party directed the first party workman to proceed to Mangalore because the Accountant at Mangalore was alleged to have committed defalcation. The first party workman agreed to proceed to Mangalore provided he was given a salary of Rs.500 p.m. with yearly increments of not less than 50 and in addition he wanted furnished rent free quarters, to and fro travelling expenses to Mangalore. Local conveyance charges at Mangalore, boarding and lodging expenses until a suitable furnished quarter is provided and Rs 100 to be paid every month as travelling expenses in order to enable him to visit his family at Bangalore once a month till he is provided with suitable quarters. The second party agreed to the said terms and directed the first party to resume work on 11th November 1967. From 11th November 1967 to 27th December 1967 he worked at Mangalore. The first party workman was not keeping well on account of pressure of work as well as change of climate. He was admitted to the Wenlock Hospital for 2 days and continued to take medicine for some time. The first party developed throat trouble. The Doctor at Wenlock Hospital advised him to undergo an operation immediately on or about 25th December 1967. The first party workman reported this fact to the second party. On 26th December 1967 he was called upon to go over to the office immediately, at about 6-30 p.m. He was paid Rs. 30 and was

directed to proceed to Bangalore the next day to undergo operation and report to duty at Bangalore Office. The first party before leaving for Bangalore on 26th December 1967 requested the second party to pay balance salary for the month of November 1967. The second party told him that since the partners were coming over in a day or two his salary will be settled at Bangalore. The second party did not pay bonus to the first party workman which had been paid to all other employees. The first party workman came to Bangalore on 27th December 1967 and reportedto duty on 28th December 1967 and then proceeded to Victoria Hospital and got himself admitted as an inpatient on 28th December 1967. The first party workman was discharged from the hospital on 12th January 1968 and he reported to duty on 13th January 1968. He was informed that he was discharged from service with effect from 27th December 1967. He approached the Conciliation Officer, The second party did not attend the conciliation proceedings. The first party workman prays that the second party may be directed to permit the first party workman to resume duty as usual and he may be paid back wages from 1st November 1967.

3. On behalf of the second party rejoinder is filed as follows:—The second party management is a partnership concern having its head office in Mangalore and a branch at Bangalore. The partnership concern is a legal entity and it can be a party to a dispute or proceedings. The branch office by itself is not an entity. It has no existence in law It cannot be an employer nor can it be a party to the proceedings. The branch office itself being not the employer as contemplated by the order of reference, the partnership concern not being a party to the dispute, the award is not binding on the partnership concern, the real employer. As per the reference the employer, in substance is the branch office, but the branch office is not an entity and it has no existence in law. Hence this reference is infructuous and bad in law. It is denied that the first party workman was permanently appointed with an increment of Rs. 50 every year and that he was paid Rs 1·50 per day for lunch. He was appointed on or before 19th April 1967 and worked in all for about seven months in Bangalore and about a month and odd at Mangalore. He was asked regularise the accounts. When he was about to be discharged as the work was completed at Bangalore the Head office at Mangalore wanted him to regularise the accounts at Mangalore. The Head Office agreed to pay the boarding and lodging expenses at Mangalore as desired by him and he was agreed to be paid Rs. 250 permonth. After he worked at Mangalore for one and half months

the complained that the climate was not suitable to him and therefore he was unable to work and he left Mangalore, So he left Mangalore on the plea that he was not doing well and that he would not work under the II Party. He was also informed that the work for which he was employed had been completed and his services were no longer required. It is denied that the first party workman stipulated that he should be paid a sum of Rs. 500 per month and that the second party agreed for the same. It is also denied that the second party agreed to provide him rent free quarters and to pay to and fro travelling expenses to Mangalore or local conveyance. The second party agreed to pay him only boarding and lodging expenses till the work at Mangalore was completed. It is denied that when the first party workman left Mangalore he was asked to join duty at Mangalore office. It is denied that he joined Bangalore Office on 28th Decembe 1967 and amitedd as an inpatient on 28th December 1967 at the Victoria Hospital, Bangalore. He refused the bonus offered to him and hence he is not entitled to any amount. It is denied that he reported to duty on 13th January 1968. The termination in fact and in law is discharge simpliciter and the said termination is *bona fide* and as per the terms of appointment. It is prayed that the reference may be rejected.

4. The first party workman has filed his reply statement as follows :—Even though the second party is having its head office at Mangalore the branch office at Bangalore appointed the first party and the first party continued to work in Bangalore from 19th April 1967 to 10th November 1967 and as directed by the second party he proceeded to work at Mangalore from 11th November 1967 to 26th December 1967. The fact the second party at Bangalore has no legal entity is immaterial for the purposes of this dispute. The second party is carrying on business at Bangalore and has registered itself under the Mysore Shops and Establishments Act Therefore it is a legal entity and the reference is maintainable in law. The other averments in the claim statement are reiterated.

5. The following issues are framed :—

1. Whether as pleaded in para 2 of the rejoinder the order of reference is infructuous and bad in law ?

2. Whether I Party workman was appointed permanently ?

or

Whether he was appointed temporarily till the arrears of work are cleared ?

3. Whether the arrears of work are cleared ?

4. Whether the II Party is justified in terminating the services of I Party workman ?

5. What relief, if any, is I Party workman is entitled to ?

6. The important question for consideration in this reference is whether as pleaded in para 2 of the rejoinder the order of reference is infructuous and bad in law. It is admitted that Azad Industries is a partnership concern and it has its head office in Mangalore, South Kanara. The second party at Gundopanth Street, Bangalore is only a branch office. It is contended on behalf of the second party that in the reference the branch office at Bangalore is made the second party. The second party which is a branch office by itself is not an entity and it has no existence in law. It cannot be an employer. It cannot be a party to the present proceedings. Since the management of M/s. Azad Industries, H.O, Mangalore which is a partnership concern is not made a party the present proceedings are infructuous. On behalf of the second party the decision reported in 1965 Industrial Court Reporter 101 (relevant portion in page 105) is relied upon. In the said decision it is laid down as follows :—

> "It is apparent that the employer-company's branch office in Bombay was by mistake deemed to be the Company itself and, therefore, treated as an employer. Evidently there is a mistake about the identity of the employer, party to the dispute. The mistake is of a very serious nature. The company is a legal entity and it can be a party to a dispute or a proceeding. The company's branch office by itself is not an entity, it has no existence in law; it cannot be an employer; it cannot be a party to any proceeding. The company itself being not the employer as contemplated by the order of reference and the company as such being not a party

to the proceedings before the Tribunal, the decision and the award to be made by the Tribunal would not be binding on the company, the real employer. As contemplated by the order of reference the employer is in substance, the branch office; the party to the proceedings before the Tribunal is also the Branch Office. But the branch office is not an entity and it has no existance in law. In effect the employer contemplated by the order of reference is unreal, in substance there is no employer. Similarly no employer is a party to the proceedings before the Tribunal. In the circumstances the order of reference is inoperative and any proceedings before the tribunal would be inffuctuous".

It is contended on behalf of the second party that even though the above said decision relates to a limited joint stock company the principles laid down in the above said decision are applicable to a partnership firm as well.

7. On behalf of the first party workman it is contended that he was appointed by the second party and his pay was paid by the second party and the second party is an establishment registered under the Mysore Shops and Eastablishments Act 1961 and therefore the second party is a proper party to the reference and the reference is perfectly maintainable.

8. As against this contention it is contended on behalf of the second party that the second party has no independent existence and the first party workman was appointed as per the directions given by the head office. The head office was the employer and further at the time when his services were terminated he was working at the head office. Hence without the presence of Azad Industries, H. O., Mangalore no relief could be granted to the first party workman and the reference is not valid and it is liable to be rejected.

9. As urged on behalf of the second party the principles laid down in the above said decision are applicable to the partnership concern as well. In this case Azad Industries, is a partnership concern and as admitted it has its head office in Mangalore. This partnership concern is not a party in this reference. But the Bangalore Branch is the second party. The Bangalore branch has

no powers to employ any person as an employee. The first party workman though was employed at Bangalore was in fact an employee of the partnership concern. The Bangalore office has no independent existence and it has no existence in law Merely because the branch office is registered under the Mysore Shops and Establishments Act that would not be sufficient to make any award that may be passed binding on the partnership concern which is not before the Court. Further as contended on behalf of the second party before his services were terminated he was working at the head office at Mangalore. In view of these facts since M/S Azad Industries which is a partnership firm having its head office at Mangalore is not a party in this case the reference becomes inoperative and the proceedings before this court would be infructuous as stated in the above said decision. Hence I hold issue No. 1 in favour of the second party. In view of this finding on issue No. 1 it is unnecessary to give findings on the other issues.

10. In the result the reference is rejected with no order as to costs.

A. N. SUNDARA MURTHY,
Presiding Officer,
Labour Court, Bangalore.